IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1443 OF 2006

Shri Babu Bhaktavacchalam Naidu @ Kanya @ Yeda Babu, R/o. Ramnagar Zopadpatti Seva Nangha, Room No.20, Flank Road, Sion (East), Mumbai – 400 022 (At present in Central Prison, Thane). ... Petitioner

Versus

1. Shri A.N. Roy, Commissioner of Police, Brihanmumbai.
2. The Superintendent, Thane Central Prison, Thane.
3. The Superintendent, Nashik Road Central Prison, Nasik.
4. The State of Maharashtra ... Respondents

Mr. V.S. Kotwal with Mr. M.S. Mohite for the petitioner.

Ms. A.S. Pai, A.P.P. For the State.

CORAM : SMT. RANJANA DESAI & ANOOP V. MOHTA, JJ.

DATED : 28TH FEBRUARY, 2007.

ORAL JUDGEMENT:- (Per Smt. Ranjana Desai, J.)

1. The petitioner is detained under the provisions of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (for short, “the said Act”). The order of

detention is issued by respondent 1 - the Commissioner of Police, Brihanmumbai, with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order. The order of detention along with the grounds of detention and the material in support thereof was served on the petitioner on 7/6/2006. In this petition there is a challenge to the said order of detention.

2. The order of detention is based on C.R. No.524 of 2005 registered at Sion Police Station under sections 452, 326, 324 and 506(ii) of the Indian Penal Code (for short, “the IPC”). The incident in connection with which this case was registered had taken place on 29/12/2005. The petitioner was arrested in connection with the same on 4/01/2006 and he was ordered to be released on bail on 20/1/2006. The petitioner availed of the bail order on 21/1/2006. The detaining authority has also relied on two in-camera statements of witnesses “A” and “B'. In-camera statement of witness “A” was recorded on 31/3/2006 in which he has deposed about an incident which had taken place in the first week of February, 2006. In-camera statement of witness “B” was recorded on 3/4/2006 in which he has deposed about an incident which had taken place in the first week of February, 2006. The proposal for the detention of the petitioner was submitted on 17/4/2006 and the detention order came to be issued on 2/6/2006.

3. Mr. Kotwal, the learned counsel appearing for the petitioner has assailed the impugned order on several counts. It is not necessary for us to

deal with all his submissions because in our opinion, the order of detention will have to be set aside on the ground that the petitioner has not been supplied with true, correct and faithful translation of medical papers in respect of the victims – Raju Kolekar and Sakubai Kolekar though it is asserted by the detaining authority that it is supplied to the petitioner. Our attention is drawn by Mr. Kotwal to the medical certificate in respect of the injuries suffered by Raju Kolekar dated 23/1/2006. The original certificate in English contains particulars of several injuries suffered by Raju Kolekar. The translation which is supplied to the petitioner, which is annexed to the petition, states that the injuries suffered by Raju Kolekar are as under. However, the particulars of not a single injury have been translated in the Hindi. Similar is the case as regards injuries suffered by Sakubai Kolekar. Whereas the original certificate in English language contains particulars of several injuries, in the Hindi translation, though it is stated that the injuries are as under, no particulars of injuries are given in the translated copy. This point is raised by the petitioner in the petition. The detaining authority has replied to this contention by stating that the detenu has been furnished with true, correct and faithful translation of all the documents. We fail to understand as to how it can be said that the true, correct and faithful translation has been given to the petitioner when, in fact, the injuries are not translated in the Hindi, at all. Mr. Kotwal has pointed out that the petitioner through his advocate had requested the State Government to supply readable copies as well as translated copies of the medical certificates of the victims so that he could make effective representation against the order of detention. In reply to this, the Under

Secretary to the Government of Maharashtra, Home Department (Special), vide letter dated 13/7/2006 has informed the advocate for the petitioner that the medical certificate is issued by the medical officer of the Sion Hospital and the translation of the medical certificate has been given to the petitioner. This reply is contrary to the facts. This also indicates non-application of mind on the part of the officers of the State. In the peculiar facts and circumstances of the case, therefore, we are of the opinion that the impugned order of detention will have to be set aside on the ground of non-application of mind on the part of the detaining authority as well as the State Government. When a specific point was raised that the true, correct and faithful translation of the medical certificates has not been given to the petitioner, an affidavit has been filed by the detaining authority stating that true and correct translations have, in fact, been supplied to the petitioner and the same stand is taken by the State Government. It was open to the detaining authority to accept that description of some of the injuries was not translated and give explanation for this lapse. It is not the stand of the detaining authority that the medical certificates are not relied upon documents and, therefore, no prejudice is caused to the petitioner. Surprisingly, a totally wrong statement is made in the affidavit by the detaining authority. Hence, without going to the question as to whether in all cases, the medical certificates of the victims are material documents or not, we will have to quash the impugned order of detention on the ground of non-application of mind of the detaining authority and the State Government. Hence, the petition is disposed of with the following order.

ORDER

The order of detention dated 2/6/2006 issued by respondent 1 – the Commissioner of Police, Brihan Mumbai against the petitioner / detenu Babu Bhaktavacchalam Naidu @ Kanya @ Yeda Babu, is quashed and set aside. Detenu - Babu Bhaktavacchalam Naidu @ Kanya @ Yeda Babu is ordered to be released forthwith unless otherwise required in any other case.

[SMT. RANJANA DESAI, J.]

[ANOOP V. MOHTA, J.]